IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2408 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KANTILAL SHIVLALL AMRUTIYA M L A

Appearance:

MR KG SHETH, Learned APP for Petitioner

MR SV RAJU for Respondent No. 1

MR CJ VIN for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 13/10/2000

C.A.V. JUDGEMENT

1. This Court received a letter bearing Confi. No. A/1036 of 2000 dated 29.2.2000/1.3.2000 from the learned

District and Sessions Judge, Rajkot stating that murder of one Prakashbhai Raveshiyaa took place on 16.9.1999 in a populated area in the midst of the city of Morbi for which offence has been registered at Morbi Police Station Crime Register No. 319 of 1999 for offences punishable under Sections 302, 120 B, 34 etc. of Indian Penal code against Kantilal Shivlal Amrutiay MLA, Gangaram Tapu and Another. That the case has been registered as Sessions Case No. 9 of 2000 in the Court of learned Additional Sessions Judge at Morbi. That bail applications were filed by accused persons and on the application of the original complainant Vinubhai Pragjibhai Raveshiya, brother of the deceased, bail applications and all subsequent proceedings were ordered to be transferred to the Court of learned Additional Sessions Judge, Gondal by order passed in Criminal Misc. Application No. 117 of 1999 by Sessions Court, Rajkot on 4.10.1999.

2. The learned Sessions Judge has further observed at page-2 of the said letter as follows :

"However, from the report of the learned Additional Sessions Judge, Morbi as well as from the tense atmosphere of the Morbi Town, as well as looking to the facts and circumstances of the case that one of the Accused Kantilal Shivlal Amrutia happens to be sitting Member of the Legislative Assembly, while other parties i.e. complainant and accused, happens to be having mobs of people behind them, the undersigned feels that it would not be just and proper to try and decide the aforesaid Sessions Case by the Court of learned Additional Sessions Judge, Mian at Gondal which is also in Rajkot district. I feel that mobs of people would gather together near the Court Premises at Gondal as it so happened previously at the time of hearing of bail applications. The learned Additional Judge, Gonal would be placed in embarrassing position and parties would not be in a position to learned proper evidence of witnesses who would be feared by therefore, no fair and impartial trial would be possible at Gondal if it be conducted by the learned Additional Sessions Judge at Gondal. It is therefore in the better interest of justice that the Sessions Case No. 9 of 2000 of the file of Additional Sessions Judge, Morbi, at present transferred to the file of learned Additional Sessions Judge, Main, at Gondal may be transferred to any other Sessions Court in the Gujarat State except Rajkot District, for trial

and disposal according to law by Hon'ble High court, which would enable both the sides to lead proper evidence for the ends of fair and impartial justice. Moreover, to avoid political colour and to keep away the Local Sessions Division from the baseless rumours I request to kindly consider this with foreseen measures.

Therefore, I request that the Sessions Case No. 9 of 2000 of the file of learned Additional Sessions Judge, Morbi, at present transferred on the file of learned Additional Sessions Judge, Main, Gondal, may kindly be ordered to be transferred to the file of any Sessions court in the Gujarat State as deem fit and proper by the Hon'ble High Court."

3. Therefore, the learned Sessions Judge has requested that in the aforesaid view of the matter, the Sessions Case may be transferred from the Court of the Additional Sessions Judge, at Gondal to any other Sessions Court in the State for trial according to law.

4. Mr. K.G.Sheth, learned APP appears for the State and appearance has been made on behalf of the original complainant who has stated that he has no objection if the transfer is made. It would be appropriate to consider the letter dated 29.9.2000 addressed by the District Superintendent of Police, Rajkot (Rural) at Rajkot to the Government Pleader and Public Prosecutor of the High Court of Gujarat. There, the D.S.P. has reported that the aforesaid accused Kantilal Shivlal Amrutia is a sitting MLA of Morbi-Malia area and other accused persons belong to Koli Community. It has also been mentioned that the aforesaid matter has been transferred from Morbi to Gondal. It is further mentioned that if the case is conducted at Gondal then there is no likelihood of breach of law and order. He therefore requests that this case should not be transferred to any other place in the State. Therefore, there is a positive opinion recorded by the District Superintendent of Police that there is no likelihood of any violation of public peace. Now, it is a fact that in Rajkot Sessions Division, there are other Sub Division, one is at Morbi and another is at Gondal. The Morbi area is headed by an Additional Sessions Judge. Gondal is also headed by another Additional Sessions Judge and both are working in different fields having jurisdiction over different areas. The learned Additional Sessions Judge, Morbi will have Morbi-Vakanar-Malia Taluka under him. On the other hand, the learned Additional Sessions Judge

Gondal will have so many Talukas under him including Gondal, Jetpur, Dhoraji, Upleta, Jamkandorna and Lodhika etc.

5. Now, simply one of the accused person is a sitting MLA of Morbi Malia, it would not mean that there would not be a fair trial at Gondal since both are situated in different Sub Divisions. The learned Sessions Judge has observed that since the two places are in Rajkot District he felt that mobs of people would gather together near the Court premises at Gondal as it so happened previously at the time of hearing of bail application. Now, simply because gather together it would not result in unfair trial. Even if the case is placed at another place for trial then also the interested persons may cross the said distance to attend the said trial. People at large could not be prevented from remaining present in the Court where the matter may be heard in open Court. Now the vehicles are easily available and considering the transport facilities, people can move from place to place. Therefore, it cannot be said that simply because two places are in one District the people would gather together near the Court premises at Gondal. The papers do not show that any such apprehension has been shown by the learned Additional Sessions Judge, Gondal. Moreover, it is to be considered that when the offence has taken place in Morbi area, witnesses would normally come from that area. Therefore, if the case is transferred to a distant place then all these witnesses will have to travel to a long distance to depose before the said Court where the matter may be transferred. I do not think it just and proper to direct those witnesses to travel such a distance. It is more so when it may not be certain if the Sessions court will be in a position to conduct the case consequentially. Moreover, the witnesses may have to wait till their predecessor tenders evidence. Some witnesses take more time in giving evidence. Some witnesses may be examined at length. Some of them may be cross-examined at length. Sometimes witnesses may be of formal nature and may not take time in completing their deposition. Therefore, it would not be ascertainable as to when the witnesses will have his chance of tendering evidence before the court and therefore he has to wait in the compound of court till his name is called out. Sometimes his evidence may be recorded on the same day. In a given case, he may have to wait for two to three days before his name is called out. Therefore, witnesses of Morbi area will be required to stand over for number of days at a distant place where the case may be transferred. Normally, the case should be tried and conducted at Morbi. However,

the learned Sessions Judge has exercised his discretionary powers by transferring matter from Morbi to Gondal. In the aforesaid view of the matter when the case is not going to be conducted at Morbi and the same is going to be conducted at Gondal, I do not think any problem would arise. It cannot be said that there would not be a fair trial at Gondal.

6. It is to be considered here that so far the accused persons are concerned, they have not made any move for fair trial and even the original complainant has not come out with a case that fair trial would not be there if trial is conducted at Gondal. When neither the original complainant nor the accused persons have ventilated there greivance against the place of trial at Gondal, then I do not think there is any reason for transferring the matter from the Court of Gondal to any other Sessions Court in the State. On one hand there is no necessity for transferring the case from Gondal. Then District Superintendent of Police, Rajkot (Rural) at Rajkot having responsibility of maintaining law and order in rural area, does not show any ground for transferring the matter. The witnesses are from Morbi or around it and when neither the original complainant nor the accused persons have any apprehension in their mind about the fairness of trial then in the facts and circumstances of the case, in my opinion, it is not a case wherein the sessions case should be transferred from Gondal to any other Sessions Court in the State.

7. In above view of the matter, this request made by the learned Sessions Judge at Rajkot is required to be rejected. It is more so when the learned Sessions Judge does not appear to have consulted the learned Additional Sessions Judge at Gondal. The letter of the learned Sessions Judge does not indicate any communication having been received on this subject from the learned Additional Sessions Judge at Gondal. The learned Sessions Judge does not appear to have received any communication from the complainant or from the accused persons for the transfer of the case from Gondal to any other Sessions court in the State. This appears to have been an opinion of learned Sessions Judge. In that view of the matter, this prayer deserves to be dismissed. In that view of the matter, request made by the learned Sessions Judge at Rajkot for transfer of the aforesaid Sessions Case from the Court of the Additional Sessions Judge, Gondal to any other Sessions Court Gondal in the State is ordered to be rejected. Notice is discharged.

(D.P.Buch,J)
(vipul)